

Engaging Absent Parents: Developments in Michigan Case Law and the Child and Family Services Review

Justice Maura D. Corrigan, Michigan Supreme Court

Key Requirements of *In re Rood*, 483 Mich 73 (2009); *In re Mason*, 486 Mich 142 (2010):

- When a child is removed from the home, both of the child's parents are entitled to:
 - Notice of the proceedings;
 - The opportunity to participate in each proceeding (under MCR 2.004, an incarcerated parent must be offered the right to participate by telephone);
 - Representation by an attorney at each stage of the proceedings if the parent is a respondent.
- Reasonable attempts must be made to identify and notify absent parents of child protective proceedings. The state has a duty to attempt to engage absent parents; the state is not relieved of that duty if the parent is incarcerated.
- Within 30 days of the child's placement outside the home and before the court may enter an order of disposition, the DHS must provide an initial service plan (ISP). As part of the ISP, the DHS must:
 - Identify, locate, and consult with relatives to determine placement with a fit and appropriate relative who would meet the child's needs.
 - Detail the efforts to be made and the services to be offered to facilitate the child's return to his home or other permanent placement.
- The service plan must be developed jointly with the child's parents and must include a description of the services offered to the parents, child, and foster parents to reunify the family. Parents and youth ages 14 and older must either sign the Parent-Agency Treatment Plan, or additional actions needed to secure participation and compliance must be documented.
 - An incarcerated parent has a right to participate in the service plan, and the plan must be individualized to that parent's particularized circumstances and needs.
- A parent's incarceration alone is not grounds for terminating parental rights. The relevant statute, MCL 712A.19b(3)(h), authorizes termination *only if each of 3 conditions is met*:
 - The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years,
 - The parent has not provided for the child's proper care and custody, and
 - There is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.
 - A parent may provide for a child's care and custody *although the parent is in prison*—the parent need not *personally* care for the child.
 - A parent's *past failure* to provide care because of incarceration is not determinative.